

### **REMARKS**

Claims 1-6, 8-26, 28-41 and 43-108 were examined.

Claims 1-6, 8-26, 28-41, 44-64 and 83-108 are allowed, claims 1, 66-75 and 83 are objected to and claims 65 and 76-82 are rejected.

Claims 1, 65 and 83 have been amended to correct minor informalities. Claim 65 has been further amended to specify a step of contacting a potentially suitable site with a device configured to determine the type of physiological fluid at the potentially suitable site. Support for this amendment can be found in the specification and the originally filed claims, for example Fig. 3, and paragraphs 103-105 and 114. The amendments to the claim were made solely in the interest of expediting prosecution, and are not to be construed as acquiescence to any objection or rejection of any claim and without intent to surrender any subject matter encompassed by the originally filed claims (i.e., the pre-amended claims). The Applicants expressly reserve the right to pursue any subject matter encompassed by the originally filed claims in one or more continuation and/or divisional applications.

Applicants thank the Examiner for the indication of allowance of claims 1-6, 8-26, 28-41, 44-64 and 83-108.

Applicants thank the Examiner for the indication of allowability of claims 66-75 indicated as allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, claims 109, 110 and 111 have been added as new and include the subject matter of claims 66, 69 and 73, respectively, including all the limitation of the base claim and any intervening claims.

In view of the above amendments and the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow claims 1-6, 8-26, 28-41 and 43-111, the only claims pending in this application.

As no new matter has been added by the above amendments, the Applicants respectfully request the entry thereof.

### **CLAIMS OBJECTIONS**

Claims 1, 65 and 83 were objected to. These claims have been amended to correct the informalities indicated by the Examiner. Accordingly, the Applicants respectfully request that this objection be withdrawn.

**REJECTION UNDER 35 U.S.C. §102(b)**

Claims 65, 76, 78, 81 and 82 are rejected under 35 U.S.C. §102(b) as being anticipated by Brinda (US 5,682,233).

In making this rejection, the Examiner argues that Brinda teaches interstitial fluid is desired to determine glucose concentration of a sample and that interstitial fluid may be obtained at a site within a patient's skin layer, but not through a dermal layer, and therefore implicitly teaches a step of determining the type of physiological fluid at a site and a step of determining whether the site is suitable for sampling.

While not agreeing to the propriety of this rejection or to the Examiner's assertion of any teachings, implicit or otherwise, of Brinda, and solely in the interest of expediting prosecution, claim 65, and claims 76, 78, 81 and 82 that depend therefrom, have been amended to specify a step of contacting a potentially suitable site with a device configured to determine the type of physiological fluid at the potentially suitable site.

Brinda fails to teach a step contacting a potentially suitable site with a device configured to determine the type of physiological fluid at the potentially suitable site, as specified in claim 65 as Brinda fails to teach a device configured to determine the type of physiological fluid at the potentially suitable site.

For at least these reasons, Brinda does not teach all of the claimed limitations of claim 65 and claims 76, 78, 81 and 82 that depend therefrom. As such, the Applicants respectfully request that this rejection be withdrawn.

Claims 65, 76-80 and 82 are rejected under 35 U.S.C. §102(b) as being anticipated by Douglas et al.

In making this rejection, the Examiner argues that Douglas et al. teach that blood is desired for a test determining the glucose concentration in the blood and that blood may be obtained at a site such as a user's fingertips, earlobes, etc., and therefore implicitly teaches a step of determining the type of physiological fluid at a site and a step of determining whether the site is suitable for sampling.

While not agreeing to the propriety of this rejection or to the Examiner's assertion of any teaching, implicit or otherwise, of Douglas et al., and solely in the interest of expediting prosecution, as noted above claim 65, and claims 76-80 and 82 that depend therefrom, have been amended to specify a

step of contacting a potentially suitable site with a device configured to determine the type of physiological fluid at the potentially suitable site.

Douglas et al. fail to teach a step contacting a potentially suitable site with a device configured to determine the type of physiological fluid at the potentially suitable site, as specified in claim 65 as Douglas et al. fail to teach a device configured to determine the type of physiological fluid at the potentially suitable site.

For at least these reasons, Douglas et al. do not teach all of the claimed limitations of claim 65 and claims 76-80 and 82 that depend therefrom. As such, the Applicants respectfully request that this rejection be withdrawn.

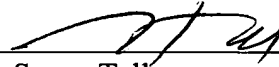
**CONCLUSION**

In view of the remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, reference no. LIFE-045.

Respectfully submitted,  
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Date: 7/20/04

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